



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1996

Mr. Philip S. Haag
Hutcheson & Grundy, L.L.P.
Franklin Plaza
111 Congress Avenue, Suite 2700
Austin, Texas 78701-4043

OR96-1816

Dear Mr. Haag:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101485.

The River Place Municipal District (the "district"), which you represent, received a request for information relating to "the influent and effluent at its wastewater treatment plant." You contend that some of the requested documents, copies of which you have submitted to this office for review, are excepted from disclosure under section 552.103 of the Government Code.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. A contested case under the Administrative Procedure Act is litigation for purposes of section 552.103(a). Open Records Decision No. 588 (1991). You have shown that the district is party to a contested case before the Texas Natural Resource Conservation Commission and that the requested information relates to this case. Thus, you may withhold the information from disclosure pursuant to section 552.103(a) of the Government Code.¹

¹We note that if the opposing parties in the pending litigation have seen or had access to any of the information at issue, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101485

Enclosures: Submitted documents

cc: Mr. John J. Carlton
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(w/o enclosures)

(1982). Of course, the district has discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.